JEYAPALAN MAHESAN

v.

MAJLIS PEGUAM MALAYSIA

HIGH COURT MALAYA, KUALA LUMPUR
KC VOHRAH J
[ORIGINATING SUMMONS NO: R1-17-55-1999]
27 OCTOBER 2001

LEGAL PROFESSION: *Malaysian Bar - Suspension of plaintiff advocate and solicitor from practice - Whether Bar Council failed to refer complaints against plaintiff to Disciplinary Board upon suspension - Whether plaintiff should be served with documents relating to suspension - Legal Profession Act 1976, s. 88A(2), (7)*

The plaintiff was suspended from practising as an advocate and solicitor on 16 August 1998 on the application of the Bar Council. The plaintiff brought this case against the Bar Council claiming, *inter alia*, that the Bar Council failed to refer the complaints against the plaintiff to the Disciplinary Board as required by s. 88A(7) of the Legal Profession Act 1976 ('the Act'), and that he was not served with any documents to that effect as required by s. 88A(2) of the Act.

Held:

[1] There was no merit in the plaintiff's argument that the Bar Council did not comply with s. 88A(2) of the Act. Section 88A(2) relates to the service of the application which was made to the Chief Judge (Malaya) to suspend an advocate and solicitor on the said person if the Chief Judge is minded to order the service of the application on him. In the present case, there was nothing to show that the Chief Judge so ordered it to be served on the plaintiff. (p 415 c-e)

[2] The affidavit affirmed by the Secretary of the Bar clearly showed that after the plaintiff was suspended, the Bar Council had referred the complaints against the plaintiff to the Disciplinary Board pursuant to s. 88A(7) of the Act. Not only were the complaints against the plaintiff referred to the Disciplinary Board, copies of the relevant documents had been sent to the Board. Therefore, there was no truth to the averments and contentions of the plaintiff that the Bar Council had not referred the said complaints to the Disciplinary Board. Once a complaint is referred to the Disciplinary Board under s. 88A(7) of the Act, the Board becomes seized of the matter and the ball is at its feet to take further steps in accordance with Part VII of the Act. (pp 415 e-f & 419 d-e)

[3] The Bar Council in its letter dated 13 April 1999 did show concern that there was no action by the Disciplinary Board over the complaints made against the plaintiff and requested that the hearings on the complaints be expedited. The Bar Council itself was concerned over the delay in the hearing of the complaints but the matter was out of its hands statutorily and were at the feet of the Disciplinary Board. The allegation of delay by the plaintiff on the part of the Bar Council was clearly unjustified. (p 419 e-g)

[Case dismissed.]

Legislation referred to:
Legal Profession Act 1976, ss. 88A(1)(c), (2), (7), 99

For the plaintiff - Shaik Anwar Raja; M/s Anwar & Assoc
For the defendant - Robert Lazar (Alvin Tang); M/s Shearn Delamore & Co

Reported by Usha Thiagarajah

JUDGMENT

KC Vohrah J:
The plaintiff filed an originating summons against the Bar Council Malaysia for five orders against the Bar Council which I summarily dismissed. An appeal has been lodged against my decision.

The prayers sought for by the plaintiff are:

(1) that the Bar Council because it has not satisfied the mandatory requirements under s. 88A(7) of Legal Profession Act 1976 (the Act) has been negligent;

(2) that the Bar Council failed to satisfy ss. 88(A) and 99 of the Act and as such had acted *mala fide* in its action and this amounts to criminal negligence;

(3) that the Bar Council be prevented from taking any further action against the plaintiff until the issues in this originating summons have been resolved;

(4) that the action taken by the Bar Council under Originating Summons No. 17-9-98 be declared *void ab initio* because of the *mala fide* action;

(5) that the Bar Council be held accountable for the loss in damages incurred by plaintiff as a result of its action.

In the affidavit of the plaintiff supporting the summons the plaintiff states that he was suspended from practicing as an advocate and solicitor on 16 August 1998 on the application of the Bar Council in Originating Summons 17-9-98.

The suspension was made under the ground specified in s. 88A(1)(c) of the Act. He avers that under sub-s. (7) of s. 88A the Bar Council, as soon as possible, shall thereafter refer to the Disciplinary Board a complaint against the advocate and solicitor in question. He contends that after his suspension by Chief Judge (Malaya) the matter ought to have been referred to the Disciplinary Board but no such reference was made to the Disciplinary Board by the Bar Council. He was not served with any documents to that effect.

It was argued by counsel of the plaintiff, Encik Shaik Anwar Raja, that till the date of the hearing the plaintiff was not aware if the documents relating to the suspension of the plaintiff by the Chief Judge (Malaya) had been sent to the Disciplinary Board and that there was therefore no compliance with the provisions of the s. 88A(2). This particular argument has no merit as s. 88A(2) relates to the service of the application which was made to the Chief Judge (Malaya) to suspend an advocate and solicitor on the said person if the Chief Judge is minded to order the service of the application on him and there was nothing to show that the Chief Judge so ordered it to be served.

I also have to reject the averments and contentions of the plaintiff relating to the non-compliance of sub-s. (7) of s. 88A. The affidavit affirmed by the Secretary of the Bar (encl. 10) clearly shows that after he was suspended on 16 July 1998 the Bar Council referred what were in reality several complaints against the plaintiff to the Disciplinary Board pursuant to s. 88A(7) of the Act. Letters relating to the complaint between the Bar Council and the Disciplinary Board have been exhibited in the affidavit. The letter dated 20 July 1998 from the Bar Council reads:

> BC/COMP/2/98(DB),BC/COMP/3/98(DB)
> BC/COMP/16/98(DB),BC/COMP/42/98(DB)
>
> 20 July 1998
>
> Director
> Complaints Secretariat
> No. 4, 1st & 2nd Floor
> Medan Pasar
> 50050 Kuala Lumpur
>
> Dear Sir,
>
> COMPLAINT AGAINST MR JEYAPALAN MAHESAN OF MESSRS CLOUGH THURAISINGHAM & JEYA MAHESAN BY:

1) MARWAN BIN MD SAMAN (COMP/2/98)
2) EXPORT CAR CORPORATION (COMP/3/98)
3) WEE POH HOLDINGS SDN BHD (COMP/16/98)
4) MESSRS KC LIM & CO ON BEHALF OF DAVY WOO NAM SENG (COMP/42/98)

We refer to the above matters and wish to inform you that Mr Jeyapalan Mahesan has been suspended by an Order of the High Court dated 16 July 1998 pursuant to s. 88A of the Legal Profession Act 1976. In the circumstances, kindly take the appropriate action pursuant to s. 88A(7) of the Act. Copies of the relevant documents for each complaint are enclosed herewith for your attention.

Thank you.

Yours faithfully,

Sgd: xxx
Cindy Chan
Executive Officer

Encl.

c.c. Messrs Shearn Delamore & Co.
(Your ref: SD 1994243(RL))

The Disciplinary Board on 22 July 1998 sent a standard reply to the Bar Council with a request for copies of documents which support the complaints thus;

Your Ref: COMP/2/98

Our Ref: DB/MISC-NC/98/Ayang.rules

July 22nd 1998

Bar Council
No. 5, Jalan Tun Perak
50050 Kuala Lumpur

Dear Sirs/Madam,

RE: COMPLAINT AGAINST MR JEYAPALAN MAHESAN OF MESSRS CLOUGH THURAISINGHAM & JEYA MAHESAN BY BAR COUNCIL

We refer to your letter dated July 20, 1998.

2. If you wish to lodge a complaint against an advocate & solicitor, please state the name and address of the advocates & solicitors and refer to paragraph 3 below.

3. In accordance with Rules 3 & 4 of the Legal Profession (Disciplinary Proceedings) (Investigating Tribunal and Disciplinary Committee) Rules 1994 kindly comply with the following requirements to enable us to process your complaint against the advocate (s) & solicitor (s) concerned:

( ) copy of identity card or passport of the complainant;

( ) the facts of the complaint;

(/) copies of any documents that you propose to rely on in support of your complaint;

( ) your signature at the end of the complaint;

( ) the name and address of your present solicitor (s), acting for you in this complaint (if any) and;

( ) a non-refundable sum of RM50.00 as the processing fee for your complaint. If payment is by way of a cheque or money order please make the same payable to the **"Discipline Fund"**

4. Kindly comply with the said request within twenty (20) days from the date of receipt of this letter failing which your complaint shall be rejected forthwith without further reference to you.

5. Please also supply us with your telephone number if any.

6. Kindly let us know whether you wish to lodge a complaint against an advocate & solicitor. If so, please name the advocate (s) & solicitor (s).

KINDLY TAKE NOTE: The Advocate & Solicitors' Disciplinary Board has no jurisdiction to render legal advice and/or to investigate negligence and/or to order the return of money/documents against advocates & solicitors.

Yours faithfully,

Sgd: xxx
RAMDHARI @ JAI AM
DIRECTOR
COMPLAINT SECRETARIAT

The Bar Council replied on 5 November 1998:

BC/COMP/2/98(DB)

5 November 1998

Director
Complaints & Secretariat
No. 4, 1st & 2nd Floor
Medan Pasar
50050 Kuala Lumpur

Dear Sir,

ORDER OF SUSPENSION BY HIGH COURT AGAINST MR JEYAPALAN MAHESAN

We refer to the above matter and our telephone conversation on 3 November 1998.

As requested, we forward herewith a copy of the sealed Order dated 16 July 1998 suspending Mr Jeyapalan Mahesan for your records.

Yours faithfully,

Sgd: xxx
Cindy Chan
Executive Officer

Encl.

There was another letter from the Bar Council dated 13 April 1999 which is self-explanatory:

DB/MISC-NC/98/Ayang,DB/92/92,
DB/360/96/Awin
BC/COMP/2/98(DB)BC/COMP/3/98(DB)
BC/COMP/16/98(DB),BC/COMP/42/98(DB)
BC/S88/4/92,BC/S88/5/92,BC/S88/6/92,
BC/COMP/17/96(DB)

13 April 1999

Director
Disciplinary Board
No. 4, 1st & 2nd Floor
Medan Pasar
50050 Kuala Lumpur

Dear Sir,

COMPLAINTS AGAINST MR JEYAPALAN MAHESAN OF MESSRS CLOUGH THURAISINNGHAM & JEYA MAHESAN

We refer to the above matter and our letter of 20 July 1998 enclosing the relevant complaint documents pursuant to Section 88A(7) of the Legal Profession Act 1976 for your further action. You had on 22 July 1998 replied requesting the documents but we had thereafter verbally verified with your staff, Cik Ayang, that the documents had in fact been received.

We regret that to date, there has still been no action taken. For ease of reference, we enclose herewith a summary of all the 8 complaints that have been referred to you between August 1994 and July 1998. We would appreciate if you could expedite the hearings of these matters in view of the number of complaints of a serious nature. It is our view that the complaints should be heard collectively as they all involve the same solicitor.

Thank you.

Yours faithfully,

Sgd: xxx
Cindy Chan
Executive Officer

Encl.

It will be seen from the letter that that not only were the complaints referred to the Disciplinary Board as required by sub-s. 7 of s. 88A, copies of relevant documents had been sent to the Board, and there is no truth to the averments and contentions of the plaintiff that the Bar has not referred the complaints to the Disciplinary Board. Once a complaint is referred to the Disciplinary Board under s. 88A(7) of the Act the Board becomes seised of the matter and the ball is at its feet to take further steps in accordance with Part VII of the Act.

It will be noted that the Bar Council in its letter dated 13 April 1999 did show concern that there was no action by the Disciplinary Board over the complaints made against the plaintiff and requested that hearings on the complaints be expedited. The Bar Council itself was concerned over the delay in the hearing of the complaints but the matter was out of its hands statutorily and were at the feet of the Disciplinary Board. The allegation of delay by the plaintiff on the part of the Bar Council is clearly unjustified.

There is absolutely no merit in the case of the plaintiff and I dismissed the case with costs.